

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

RICHARD GOMEZ,

Plaintiff,

vs.

UNIVERSITY OF TEXAS AT  
BROWNSVILLE,

Defendant.

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CIVIL ACTION 1:10-CV-003

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**AFFIDAVIT OF CAROL FELKEL**

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STATE OF TEXAS

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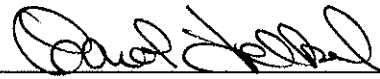
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COUNTY OF TRAVIS

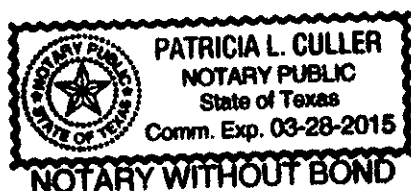
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BEFORE ME, the undersigned notary public, on this day personally appeared Carol Felkel, the affiant, a person whose identity is known to me. After I administered an oath to Ms. Felkel, she testified:

1. "I, Carol Felkel, am of sound mind, am over the age of 21, and am fully competent and qualified to make this affidavit. All of the facts set forth below are true and correct and are known to me pursuant to my own personal knowledge.
2. I am presently employed as Secretary to The University of Texas System Board of Regents.
3. By virtue of my duties as Secretary to the Board of Regents, I am personally familiar with the *Rules and Regulations* of The University of Texas System Board of Regents ("Regents' Rules"). Attached as exhibits to this affidavit are true and correct copies of certain Regents' Rules, which were approved on December 10, 2004, were in effect in 2008, and are still in effect today.
4. Attached hereto as Exhibit 1 is a true and correct copy of Regents' Rule 31002.
5. Attached hereto as Exhibit 2 is a true and correct copy of Regents' Rule 31008."

  
\_\_\_\_\_  
Carol Felkel

SUBSCRIBED AND SWORN TO BEFORE ME on this the 28th day of June, 2011, to certify which witness my hand and official seal.



  
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Notary Public  
State of Texas

**The University of Texas System**  
**Rules and Regulations of the Board of Regents**

**Rule: 31002**

**1. Title**

Notice of Nonrenewal to Nontenured Faculty Members

**2. Rule and Regulation**

- Sec. 1 Notice of Nontenured Faculty. In the event of decision not to reappoint a nontenured faculty member in an academic rank specified in Rule 31007, Section 3 of the Regents' *Rules and Regulations* written notice will be given them not later than March 1 of the first academic year of probationary service if the appointment expires at the end of that academic year, or not later than December 15 of the second academic year of probationary service if the appointment expires at the end of that academic year. After two or more academic years, written notice shall be given not later than 30 days prior to the end of the then current academic year that the subsequent year will be the terminal academic year of appointment and a Memorandum of Appointment shall be provided to such faculty member in accordance with *Texas Education Code Section 51.943*. The notice required by this Subsection is not applicable where termination of employment is for good cause under Rule 31008, Section 1 of the Regents' *Rules and Regulations*.
- Sec. 2 Notice of Faculty on Term Tenure. A faculty member serving a seven-year term appointment shall be given notice not later than 30 days prior to the end of the sixth academic year of such appointment period that the subsequent academic year will be the terminal year of employment or that, subject to the approval of the Board of Regents, at the conclusion of the subsequent academic year he or she will be reappointed to a seven-year term appointment. A Memorandum of Appointment shall be provided to such faculty member in accordance with *Texas Education Code Section 51.943*.
- Sec. 3 Notice and Approval by President Required. Upon expiration of an appointment period, reappointment of nontenured members of the faculty may be accomplished only by approval of the president of an institution. Reappointment of members of the faculty who are serving a seven-year term appointment to a succeeding seven-year term appointment may be accomplished only by notice by the president of an institution or his or her delegate. No nontenured member of the faculty shall expect continued employment beyond the period of his or her current appointment. Any commitment to employ a nontenured member

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of the faculty beyond the period of his or her current employment shall have no force and effect until approved by the president of the institution.

Notwithstanding any provisions of Rule 31007, Section 5 of the Regents' *Rules and Regulations*, or Sections 1 and 2 of this Rule to the contrary, no person shall be deemed to have been reappointed or to have been awarded tenure or a seven-year appointment because notice is not given or received by the time prescribed in Rule 31007, Section 5 of the Regents' *Rules and Regulations*, or Sections 1 and 2 of this Rule or in the manner prescribed in Section 1 of Rule 31003 of the Regents' *Rules and Regulations*. Should it occur that no notice is received by the time prescribed in Rule 31007, Section 5 of the Regents' *Rules and Regulations*, or Sections 1 and 2 of this Rule, it is the duty of the faculty member concerned to make inquiry to determine the decision of the president of an institution, who shall without delay give the required notice to the faculty member.

Sec. 4 Current Mailing Address. Each faculty member shall keep the president of the institution or his or her delegate notified of his or her current mailing address. The written notice required by this Rule and Rule 31007, Section 5 concerning tenure shall be sent by certified mail, return receipt requested, to the last address given by the faculty member.

**3. Definitions**

None

**4. Relevant Federal and State Statutes**

*Texas Education Code* Section 51.943– Renewal of Faculty Employment Contracts.

**5. Relevant System Policies, Procedures, and Forms**

Regents' *Rules and Regulations*, Rule 31001 – Faculty Appointments and Titles

Regents' *Rules and Regulations*, Rule 31007 – Tenure

Regents' *Rules and Regulations*, Rule 31008 – Termination of a Faculty Member

**The University of Texas System  
Rules and Regulations of the Board of Regents**

**Rule: 31002**

**6. Who Should Know**

Administrators  
Faculty

**7. System Administration Office(s) Responsible for Rule**

Office of Academic Affairs  
Office of Health Affairs  
Office of General Counsel  
Office of Human Resources

**8. Dates Approved or Amended**

Section 3 was editorially amended on February 22, 2010  
August 23, 2007  
December 10, 2004

**9. Contact Information**

Questions or comments regarding this rule should be directed to:

- [bor@utsystem.edu](mailto:bor@utsystem.edu)

**The University of Texas System  
Rules and Regulations of the Board of Regents**

**Rule: 31008**

**1. Title**

Termination of a Faculty Member

**2. Rule and Regulation**

Sec. 1 Termination for Good Cause. Termination by an institution of the employment of a faculty member who has been granted tenure and of all other faculty members before the expiration of the stated period of appointment, except as is otherwise provided in Rule 31007, Section 5, and *Texas Education Code Section 51.943*, or by resignation or retirement, will be only for good cause shown. Faculty member, as used in this Section, includes a professional librarian with an academic title. In each case the issue of good cause will be determined according to the equitable procedures provided in this Section.

Sec. 2 Review of Allegation. The president of the institution (the president) shall assure that all allegations against a faculty member that involve the potential for termination are reviewed under the direction of the chief academic officer unless another officer is designated by the president. The faculty member who is the subject of the allegations shall be given an opportunity to be interviewed and shall have the right to present a grievance, in person or through a representative, to the chief academic officer on an issue or subject related to the allegations under review. The chief academic officer or another individual designated by the president if the allegations pertain to the chief academic officer shall take the grievance, if any, into consideration prior to making a determination whether the allegations are supported by evidence that justifies the initiation of termination procedures. Upon making that determination, the chief academic officer or other appropriate designee will recommend to the president whether to proceed with charges for termination. Failure to present a grievance to the chief academic officer or other appropriate designee prior to his or her recommendation shall not preclude a faculty member from presenting an issue or subject to the special hearing tribunal in defense of charges for termination that may result from the review. A tenured faculty member who is recommended for termination on the basis of periodic evaluation must be given the opportunity for referral of the matter to nonbinding alternative dispute resolution, as required by *Texas Education Code Section 51.942* and in compliance with applicable policies and procedures for alternative dispute resolution within The

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University of Texas System or any of the institutions, prior to referral of the charges to a hearing tribunal under Section 4 of this Rule.

Sec. 3 Response to Allegation. If the president determines that the allegations are supported by evidence that justifies the initiation of termination procedures, the president will meet with the faculty member, explain the allegations and supporting evidence, and give the faculty member a reasonable amount of time, as determined by the president, to respond either orally or in writing. In cases of incompetency or gross immorality, where the facts are admitted, or in cases of felony conviction, the hearing procedures of Section 4 of this Rule shall not apply, and dismissal by the president will follow.

Sec. 4 Hearings Tribunal. In cases where other offenses are charged, and in all cases where the facts are in dispute, the accused faculty member will be informed in writing of the charges. If the president determines that the nature of the charges and the evidence are such that it is in the best interest of the institution, the accused faculty member may be suspended with pay pending the completion of the hearing and a final decision. A special hearing tribunal of at least three faculty members will hear the charges. The academic rank of each member of the tribunal must be at least equal to that of the accused faculty member. The accused faculty member will be notified of the names of the faculty members selected for the tribunal and of the date, time, and place for the hearing. Such notification shall be made at least eight workdays prior to the hearing. The hearing tribunal members are appointed by the president from a standing panel (pool) of members of the faculty. At least 50% of the panel members from which the hearing tribunal members are appointed shall be selected by a procedure established by the faculty governance organization, an existing faculty committee with oversight for university-wide faculty committee selection. The president shall appoint the remaining members of the panel. A minimum of one member of a hearing tribunal appointed by a president is to be from among panel members selected by the faculty input, existent faculty committee, or faculty governance procedure. The president may request counsel from the System Administration's Office of General Counsel to advise the hearing tribunal.

4.1 Right to Cross-examine. In every such hearing the accused faculty member will have the right to appear in

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person and by counsel of the accused's selection and to confront and cross-examine witnesses who may appear. If counsel represents the accused faculty member, the institution is entitled to be represented by counsel from System Administration's Office of General Counsel.

- 4.2 Right to Testify. The accused faculty member shall have the right to testify, but may not be required to do so. He or she may introduce in his or her behalf all evidence, written or oral, which may be relevant and material to the charges.
- 4.3 Record of Proceeding. A stenographic or electronic record of the proceedings will be taken and filed with the Board of Regents, and such record shall be made accessible to the accused.
- 4.4 Burden to Prove Good Cause. A representative of the institution may appear before the hearing tribunal to present witnesses and evidence in support of the charge against such faculty member, and such institutional representatives shall have the right to cross-examine the accused faculty member (if the faculty member testifies) and the witnesses offered in behalf of the faculty member. The institution has the burden to prove good cause for termination by the greater weight of the credible evidence.
- 4.5 Make-up of Hearing Tribunal. The hearing tribunal shall not include any accuser of the faculty member. If the accused faculty member is not satisfied with the fairness or objectivity of any member or members of the hearing tribunal, the faculty member may challenge the alleged lack of fairness or objectivity, but any such challenge must be made in writing to the hearing tribunal at least three workdays prior to the date for the hearing. The accused faculty member shall have no right to disqualify any member or members from serving on the tribunal. It shall be up to each challenged member to determine whether he or she can serve with fairness and objectivity in the matter, and if any challenged member should voluntarily disqualify himself or herself, the president shall appoint a substitute member of the tribunal from the panel described in Section 4 of this Rule.



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- 4.6 Findings and Recommendations. The hearing tribunal, by a majority of the total membership, will make written findings on the material facts and will make a recommendation of the continuance or termination of the accused faculty member. The hearing tribunal, by a majority of its total membership, may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the recommendation, with any supplementary suggestions, shall be delivered to the president and a copy to the accused. If minority findings, recommendations, or suggestions are made, they shall be similarly treated. The original transcript of the testimony and the exhibits shall also be forwarded to the president.
- 4.7 President's Report. Within fourteen (14) workdays after receipt of the findings and recommendations of the hearing tribunal, the president shall make one of the following decisions based solely on the evidence of record in the proceedings and report that decision in writing to the accused faculty member:
- (a) The president may decide to dismiss the matter or impose sanctions short of termination. In this case, the president's decision is final and the Board of Regents will not review the matter.
  - (b) If the allegations are supported by evidence that constitutes good cause for termination, the president may decide to recommend termination to the Board of Regents. If so, the president shall forward the findings and recommendations of the hearing tribunal, the original transcript of the testimony and the exhibits to the Board of Regents for its review, along with the president's report. If the president's recommendation is not the same as the majority recommendation of the hearing tribunal, the president shall state the reasons for the president's decision to recommend termination in his or her report. The accused faculty member may, within seven workdays after receiving the president's report, submit a written response to the Board of Regents. The response must be based solely on the evidence of record in the proceeding.



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- Sec. 5 Board Review. The Board of Regents, by a majority of the total membership, will approve, reject, or amend such findings, recommendations, and suggestions, if any, or will recommit the report to the same tribunal for hearing additional evidence and reconsidering its findings, recommendations, and suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the accused.
- Sec. 6 Reasons for Termination Not Required. Full-time faculty members who are notified in accordance with Rule 31002, Section 1 of the Regents' *Rules and Regulations*, concerning notice of nonrenewal, that they will not be reappointed or who are notified in accordance with Rule 31007, Section 5 and Rule 31002, Sections 1 and 2 that the subsequent academic year will be the terminal year of appointment shall not be entitled to a statement of the reasons upon which the decision for such action is based. Such a decision shall only be subject to review pursuant to the following procedures:
- 6.1 Grievance. The affected faculty member may present a grievance, in person or through a representative, to the chief academic officer or another individual designated by the president if the allegations pertain to a chief academic officer on an issue or subject related to the nonrenewal decision. The chief academic officer shall meet with the faculty member. Unless a review by a hearing tribunal is requested and granted, pursuant to Section 6.2 below, the nonrenewal decision shall not be subject to further review.
- 6.2 Hearing Tribunal to Hear Grievance. A review by a hearing tribunal shall be granted only in those cases where the affected faculty member submits a written request for review by a hearing tribunal to the president and describes in detail the facts relied upon to prove that the decision was made for reasons that are unlawful under the Constitution or laws of Texas or the United States. If the president determines that the alleged facts, if proven by credible evidence, support a conclusion that the decision was made for unlawful reasons, such allegations shall be heard by a hearing tribunal under the procedures in Section 4 of this Rule as in the case of dismissal for cause, with the following exceptions:

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- (a) The burden of proof is upon the affected faculty member to establish by the greater weight of the credible evidence that the decision in question was made for reasons that are unlawful under the Constitution or laws of Texas or the United States.
- (b) The administration of the institution need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents credible evidence that, if unchallenged, proves the decision was made for unlawful reasons.
- (c) The hearing tribunal shall make written findings and recommendations based on the evidence presented at the hearing and shall forward such findings and recommendations with the transcript and exhibits from the hearing to the president.
- (d) The president may approve, reject, or amend the recommendations of the hearing tribunal or may reach different conclusions based upon the record of the hearing. The decision of the president shall be final.

**3. Definitions**

Faculty Member – a faculty member is any individual holding an academic title listed in Regents' *Rules and Regulations*, Rule 31001, Section 2, with the exception of Assistant Instructors, Teaching Associates, and Teaching Assistants.

**4. Relevant Federal and State Statutes**

*Texas Education Code* Section 51.942 – Performance Evaluation of Tenured Faculty.

*Texas Education Code* Section 51.943– Renewal of Faculty Employment Contracts

**5. Relevant System Policies, Procedures, and Forms**

Regents' *Rules and Regulations*, Rule 31001 – Faculty Appointments and Titles

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Rules and Regulations of the Board of Regents**

**Rule: 31008**

**6. Who Should Know**

Administrators  
Faculty

**7. System Administration Office(s) Responsible for Rule**

Office of Academic Affairs  
Office of Health Affairs

**8. Dates Approved or Amended**

Editorial amendment to Section 6.2 made October 2, 2009  
February 12, 2009  
Editorial amendment to Sec. 1 made April 8, 2008  
December 10, 2004

**9. Contact Information**

Questions or comments regarding this rule should be directed to:

- [bor@utsystem.edu](mailto:bor@utsystem.edu)